tract was void for lack of mutuality of obligation. *Wickham & Burton Coal Co.* v. *Farmers' Lumber Co.* (Iowa, 1920), 179 N. W. 417.

It is unfortunate that there should be the confusion and diversity that is found in the authorities as to the validity of so convenient and common a type of contract as those here involved. The trouble arises from the failure of some courts to realize that there is, of the three used, but one true criterion by which to test such agreements. namely, the presence of consideration. The test should not be for mutuality, nor for certainty and definiteness. While these ordinarily accompany and indicate consideration, they are not indispensable. There is clear-cut, carefully reasoned authority, both early and recent, for this view. *L'Amoreux* v. *Gould,* 7 N. Y. 349; *Jenkins & Co.* v. *Anaheim Sugar Co.,* 247 Fed. 958; *Ramey Lumber Co.* v. *John Schroeder Lumber Co.,* 237 Fed. 39; *Bartlett Springs Co.* v. *Standard Box Co.,* 16 Calif. App. 671. But decisions put on the unsatisfactory basis of mutuality and certainty are numerous. *Bailey* v. *Austrian,* 19 Minn. 535, is still cited. In *Joliet Bottling Co.* v. *Joliet Citizens' Brewing Co.,* 254 Ill. 215, it was held that an agreement by the brewery to furnish beer to satisfy the bottling company's demand was void for lack of mutuality and certainty. In contrast to the holding of the court in *Ayer & Lord Tie Co.* v. *O. T. O'Bannon & Co.,* 164 Ky. 34, that a contract to furnish all the ties the vendor "could deliver" was good, we have the decision in *Hudson* v. *Browning,* 264 Mo. 58, decided the same year, that a contract to furnish all the ties "his time, money and effort would permit," was void. See 13 MICH. L. REV. 682. Whether there is consideration in a given case must, of course, depend on the facts thereof and the intention of the parties as it can be interpreted from the words they used. If performance as promised by either is dependent merely upon his wish, whim, desire, convenience, etc., it is illusory and is not sufficient consideration for another promise; but if the promise is to buy of the other and no one else, to buy of that other his business wants, needs, or requirements for a certain time, it may well be a substantial promise and therefore good consideration. See WILLISTON ON CONTRACTS, Vol. I, 314, 315. Giving up one's legal right to buy elsewhere is sufficient consideration, although one has no established business upon which to base a "reasonably correct estimate." *Bartlett Springs Co.* v. *Standard Box Co., supra.* It would seem that consideration could easily have been found in the Delaware case noted above. The Iowa case is probably right in result, not because there was no mutuality of obligation, but for the reason that such a promise is insufficient as consideration. See 12 MICH. L. REV. 677, for a discussion of this type of contract as applied to automobile agency agreements, and also 18 MICH L. REV. 409, especially for interpretation of the word "requirements."

CONTRACTS—OFFER AND ACCEPTANCE—SILENCE—STATUTORY PROVISION AS TO INSURANCE POLICY.—A North Dakota statute (Sec. 4902, C. L. 1913) provides that "Every insurance company engaged in the business of insuring against loss by hail * * * shall be bound, and the insurance shall take effect

from and after twenty-four hours from the day and hour the application for such insurance has been taken by the authorized local agent of said company," etc. Plaintiff signed and placed in the hands of a local agent of defendant an application for insurance against hail and certain other risks, the application providing that the insurance should take effect from the day of its receipt and acceptance, "as evidenced by the issuance of a policy thereon," at an agency of the company some distance from the location of the local agent. While plaintiff's application was in transit to the designated agency there was a loss by hail, and defendant, apparently without knowledge of such loss, rejected the application. In an action to recover the insurance, *held,* the statute is valid and defendant liable. *Wanberg* v. *National Union Fire Ins. Co.* (N. Dak., 1920), 179 N. W. 666.

Since an offer creates in the offeree a power by acceptance to enter into a contractual relation with the offeror, it would seem logically sound that if the offeror chooses so to mould the power that acceptance may be manifested by silence or inaction, such silence or inaction should be sufficient to amount to acceptance. Of course, silence and inaction are equivocal, but under the circumstances stated it should be deemed logically *possible* to have acceptance evidenced thereby, and there are many such cases in the field of unilateral contracts where the act on the part of the offeree was inaction. See WILLISTON ON CONTRACTS, § 135. Where the offer contemplates a bilateral contract, a counter promise by the offeree, or an unilateral contract in which the promise is on the side of the offeree, as a practical matter it is easy to see how a court might look upon the situation somewhat differently. While a court might not be unwilling to conclude that silence or inaction may amount to acceptance whereby the acceptor merely acquires rights, unquestionably as a practical matter more hesitancy would be shown if such acceptance were also to impose liabilities. There may be situations in which there is clearly a duty on the part of the offeree to act, so that a failure to act may sufficiently show acceptance. *Wheeler* v. *Klaholt,* 178 Mass. 141; *Garst* v. *Harris,* 177 Mass. 72; *Austin* v. *Burge,* 156 Mo. App. 286; *Turner* v. *Machine & F. Co.,* 97 Mich. 166. So in the case of silence, there may have been under the circumstances a duty to speak so that a failure to do so will amount to an acceptance. In the principal case the statute seems to have created such duty. Whether the time allowed therein was not so short as to make the statute invalid may be seriously questioned. *Prescott* v. *Jones,* 69 N. H. 305; *Royal Insurance Co.* v. *Beatty* 119 Pa. St. 6; *Hobbs* v. *Whip Co.,* 158 Mass. 194; *Grice* v. *Noble,* 59 Mich. 515, are instances of mere silence not amounting to acceptance.

CORPORATIONS—LIABILITY OF STOCKHOLDERS UNDER A STATUTE MAKING THEM LIABLE FOR "DEBTS" DOES NOT INCLUDE LIABILITY FOR TORTS.—In a suit on a judgment against a corporation for the wrongful taking of ore from plaintiff's property brought against a shareholder of the corporation under a statute providing that each stockholder shall be personally and individually liable for the "debts" of a corporation to the extent of his unpaid